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SUBJECT: NICARAGUA: BACKGROUND ON AMCIT PROPERTY CLAIMS

11. (U) Summary: Current Nicaraguan property law affords U.S. claimants three administrative avenues to resolve their cases; claimants may also

Introduction -----

12. (U) Property disputes stemming from the 1980s Sandinista-era confiscations figure prominently in our bilateral relations. U.S. citizens still regularly seek assistance from the U.S. Embassy in recovering confiscated properties. The following cable outlines the historical background of property cases and ties it to the situation we find today.

Property Confiscations -----

13. (U) Between 1979 and 1982, the revolutionary Sandinista government issued a series of decrees to create the legal basis for the confiscation of private property. The GON seized nearly 20,000 properties (from cars and houses to bank accounts and farms) including about 12% of total land available in the country. To achieve its political goals, the revolutionary government first targeted certain classes of owners, i.e., the Somoza family and close political supporters, former government officials, members of the armed forces, and then later private enterprises accused of working against Sandinista economic policy and individuals (including U.S. citizens) absent from the country for more than six months. The Sandinista government also nationalized private banks, insurance companies, and mines, often utilizing formal expropriation decrees.

14. (U) In what devolved into a measure of revolutionary zeal and chaos, the Office of the Attorney General, government ministries, Sandinista Army, municipalities, individual Sandinista officials, and even squatters simply assumed physical control of property without going through a process to arrange for legal title. The central government eventually registered titles on behalf of the state for most of these properties, though many lacked any legal justification for their transfer. The government rarely paid compensation at the time of confiscation.

Legalities -----

15. (U) After the Sandinistas lost the February 1990 elections, they hastily attempted to legitimize the confiscations before departing office by transferring properties to private hands. Central to this effort were three laws. "Pinata" Law 85 transferred state-controlled urban houses to civic organizations and individuals who owned no other house before February 25, 1990. "Pinata" Law 86 did the same for urban land lots. "Pinata" Law 88 granted legal title to beneficiaries of Sandinista agrarian reform who held provisional titles to rural property. Issuing permanent title to the new owners allowed them to sell, transfer, and will such properties to others, further complicating future property claims by the original owners in the years that would follow.

16. (U) The government, Sandinista officials, and squatters also confiscated and/or distributed land outside the legal framework of the Pinata Laws. In later years, whether a confiscation "conformed" with the Pinata laws would become the legal test for determining who owned the property.

Attempts to Establish Resolution Procedures -----

17. (U) In 1992, the Chamorro government issued a series of decrees to remedy Sandinista-era title and ownership problems via a hodgepodge of solutions, including compensation, return, and swap. Subsequent decrees and regulations only further complicated the resolution process. In 1997, the Aleman government passed Law 278 to correct many of the defects in the early compensation system. This law reaffirmed the rights of those who received property under Laws 85, 86, and 88, but required beneficiaries of larger properties to pay all the taxes they owed.

Compensation -----

18. (U) Current property law affords original owners three administrative avenues to resolve their claims: 1) the outright return of their property, 2) a land swap, or 3) compensation through low-interest 15-year term indemnification bonds issued by the Government of Nicaragua. Claimants generally prefer to receive land, but this solution is often difficult to achieve. Of 3,193 total claims registered with the U.S. Embassy since 1995, 443 properties, or about 14%, have been returned to their rightful owners. Only six property claims have been resolved through land swaps.

19. (U) Claimants usually settle for compensation via government issued indemnification bonds. To initiate a property claim with this goal in mind, a claimant must file a request with the National Confiscations Review Commission (CNRC). The CNRC determines whether the claim is valid. If valid, the claimant must request that the Office of Indemnification Quantification (OCI) determine the value of the property in question. The claimant may appeal this determination twice. Once the value is determined, the government issues indemnification bonds to compensate the claimant.

110. (U) Claimants also have the option to take their case to court,

if they believe that current occupants cannot prove the legal basis for having assumed ownership. A successful lawsuit can result in the return of property, but this is very rare. If the quest for property is denied, claimants receive BPIS.

Indemnification Bonds -----

¶11. (U) Property indemnification bonds, also called compensation bonds, reimburse former owners of confiscated properties through payments funded out of future national budgets. The local currency 15-year bonds pay interest at the rate of 3% for the first two years, 4.5% for the next five years, and 5% for the remaining eight years. This interest rate is considerably below the average rate of inflation in recent years (9% during 2004-2006). Principal is paid only during the last four years.

¶12. (U) Many claimants are reluctant to accept bonds because compensation is based on the taxable value of property -- a figure considerably below market value -- and because the present value of the bonds is a fraction of their face value. Additionally, bonds do not compensate the original owner for damage to the property, or the loss of income related to the property. On February 8, 2007, such indemnification bonds sold for about 40% of face value.

¶13. (U) Since 1990, thousands of Nicaraguans and other nationals filed property claims with the Nicaraguan government. Of these, more than 1,130 U.S. citizens registered 3,193 claims with the Embassy in Managua. As of February 14, 2007, 298 U.S. citizens with 684 claims remained.

Waiver -----

¶14. (U) Section 527 of the Foreign Relations Authorization Act (Fiscal Years 1994 and 1995) prohibits U.S. economic assistance to or support in international financial institutions for any country where U.S. citizens have not received adequate or effective compensation for outstanding claims against the government for confiscated property. Section 527 also authorizes the issuance of a waiver of the prohibition, on an annual basis, if the Secretary of State determines that it is in the U.S. national interest to do so. In July 2006, the Secretary of State decided to renew the waiver for Nicaragua for the 13th year in a row based on the government's overall progress in resolving U.S. citizen claims. The government resolved 86 claims during the August 2005 to July 2006 waiver period.

¶15. (U) In December 2004, the Nicaraguan legislature passed Law 512, shifting responsibility for property claims from the Executive (Ministry of Finance) to the new National Property Institute (INPRUR). However, the legislature then decided to delay the launch of INPRUR until January 2008. The Embassy expressed concern over the potential effects of partisan interference and lack of executive branch responsibility/accountability with the implementation of Law 512, emphasizing the importance of fair and transparent resolutions to claims. The Embassy continues to work to expeditiously resolve all outstanding claims.

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